

1

2

3

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

4

5

EARNESTO GUTIERREZ,  
Petitioner,

6 v.

7 CRAIG KOENIG, Acting Warden,  
8 Respondent.

9

10

Case No. 19-cv-04432-YGR (PR)

**ORDER TO SHOW CAUSE**

11 Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to  
12 28 U.S.C. § 2254. He has paid the full filing fee.

13 It does not appear from the face of the petition that it is without merit. Good cause  
14 appearing, the Court hereby issues the following orders:

15 1. The Clerk of the Court shall serve a copy of this Order and the petition and all  
16 attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the  
17 State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current  
18 address.

19 2. Respondent shall file with this Court and serve upon Petitioner, within **sixty (60)**  
20 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules  
21 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.  
22 Respondent shall file with the Answer a copy of all portions of the relevant state records that have  
23 been transcribed previously and that are relevant to a determination of the issues presented by the  
24 petition.

25 3. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse  
26 with the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer.  
27 Should Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty**  
28 **(60) days** after the date Petitioner is served with Respondent's Answer.

1       4.     Respondent may file with this Court and serve upon Petitioner, within **sixty (60)**  
2 **days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an  
3 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
4 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on  
5 Respondent an opposition or statement of non-opposition to the motion within **sixty (60) days** of  
6 receipt of the motion, and Respondent shall file with the Court and serve on Petitioner a reply  
7 within **fourteen (14) days** of receipt of any opposition.

8       5.     It is Petitioner's responsibility to prosecute this case. Petitioner must keep the  
9 Court and Respondent informed of any change of address and must comply with the Court's  
10 orders in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro  
se* whose address changes while an action is pending must promptly file a notice of change of  
11 address specifying the new address. *See* L.R. 3-11(a). The Court may dismiss a *pro se* action  
12 without prejudice when: (1) mail directed to the *pro se* party by the Court has been returned to the  
13 Court as not deliverable, and (2) the Court fails to receive within sixty days of this return a written  
14 communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b); *see also*  
15 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

17       Petitioner must also serve on Respondent's counsel all communications with the Court by  
18 mailing a true copy of the document to Respondent's counsel.

19       6.     Upon a showing of good cause, requests for a reasonable extension of time will be  
20 granted provided they are filed on or before the deadline they seek to extend.

21       7.     Craig Koenig, the current acting warden of the prison where Petitioner is  
22 incarcerated, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of  
23 Civil Procedure.

24       IT IS SO ORDERED.

25       Dated: November 12, 2019

  
YVONNE GONZALEZ ROGERS  
United States District Court Judge